



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

May 31, 1996

Mr. David Ross Brown
Assistant General Counsel
General Services Commission
P.O. Box 13047
Austin, Texas 78711-3047

OR96-0841

Dear Mr. Brown:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 40322.

The General Services Commission (the "commission") received a request for "[a]ll materials relating to the selection of an A/E firm for the Laboratory/Office Building for the Department of Health, Austin, Texas." You contend that the requested information is protected from required public disclosure under section 552.104 of the Government Code. You also raise, without taking a position, section 552.110 of the Government Code on behalf of the A/E firms' privacy or property interests which may exist.¹

Section 552.104 excepts from required public disclosure "information that, if released, would give advantage to a competitor or bidder." The purpose of this exception is to protect the purchasing interests of a governmental body, usually in competitive bidding situations prior to the awarding of a contract. Open Records Decision No. 593 (1991) at 2. Section 552.104 requires a showing of some actual or specific harm in a particular competitive situation; a general allegation that a competitor will gain an unfair advantage will not suffice. Open Records Decision 541 (1990) at 4.

¹Because we resolve this matter under section 552.104, we do not address whether the requested information may be excepted from required public disclosure under section 552.110 at this time. However, we caution the commission, without ruling on the issue, that some or all of the requested information may contain trade secrets or commercial or financial information.

You state that the commission has not yet awarded the contract and that the contract is "a matter of negotiation." In Open Records Decision No. 170 (1977), this office stated that

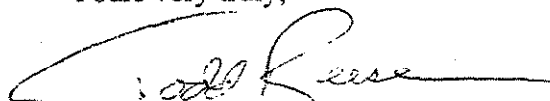
[s]o long as negotiations are in progress regarding interpretation of bid provisions, and so long as any bidder remains at liberty to furnish additional information relating to its proposed contract, we believe that the bidding process is still competitive. Release of the bids while the bidding is still competitive would necessarily result in an advantage to certain bidders at the expense of others and could be detrimental to the public interest in the contract being let.

Open Records Decision No. 170 (1977) at 2.

Under the circumstances presented to us, we conclude that you may withhold the requested information from required public disclosure under section 552.104.²

We are resolving this matter with this informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and may not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Todd Reese
Assistant Attorney General
Open Records Division

RTR/rho

Ref.: ID# 40322

Enclosures: Submitted documents

cc: Mr. Michael Brick
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(w/o enclosures)

²Once the competitive selection process is completed and a contract has been awarded, you may not continue to withhold this information under section 552.104. See Open Records Decision No. 541 (1990) at 5.